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Paper No.

MAILED  
APR 14 2009  
OFFICE OF PETITIONS

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SUMMIT ONE, SUITE 510  
INDEPENDENCE OH 44131

In re Application of	:	
Donald Pham et al.	:	
Application No. 09/922,520	:	DECISION ON PETITION
Filed: August 3, 2001	:	PURSUANT TO
Attorney Docket Number:	:	37 C.F.R. § 1.137(B)
111753	:	
Title: METHOD OF PERFORMANCE	:	
MEASUREMENT FOR A SCALABLE	:	
NETWORK	:	

This is a decision on the petition filed August 14, 2008, pursuant to 37 C.F.R. § 1.137(b), to revive the above-identified application.

The petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. § 1.113 in a timely manner to the final Office action mailed December 14, 2007, which set a shortened statutory period for reply of three months. An after-final amendment was received on May 16, 2008 along with a two-month extension of time<sup>1</sup>, and an advisory action was mailed on July 17, 2008. No extensions of time under the provisions of 37 C.F.R. § 1.136(a) were obtained, and no further responses were

<sup>1</sup> The amendment contains a certificate of mailing dated May 14, 2008.

received. Accordingly, the above-identified application became abandoned on May 15, 2008.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has submitted the petition fee, a Request for Continued Examination (RCE) along with the associated fee, an amendment, and the proper statement of unintentional delay.

The first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.<sup>2</sup>

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the submission under 37 C.F.R. § 1.114 - the amendment received on August 14, 2008 - can be processed.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

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<sup>2</sup> See Rule 1.137(d).

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.<sup>3</sup> All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/  
Paul Shanoski  
Senior Attorney  
Office of Petitions

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<sup>3</sup> Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.